

REMARKS

Claims 16-25 and 27-34 remain pending in the application. Claims 17 and 29 have been cancelled without prejudice as Applicant may wish to prosecute the subject matter of these claims in future applications. New Claims 36-39 have been presented for the Examiner's consideration. Reconsideration of the rejections set forth in the aforementioned Office Action is respectfully requested in view of the above amendments, new claims and following remarks. The basis for these amendments and new claims can be found throughout the specification, claims and drawings as originally filed.

REJECTION OF CLAIMS UNDER 35 U.S.C. § 112

Claims 16-25 and 27-34 stand rejected under 35 U.S.C. § 112, second paragraph, "as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention." Applicant has amended Claim 16 in order to correct the noted informality. In view of the above amendment, Applicant respectfully requests the Examiner to reconsider and withdraw the Section 112 rejection to Claims 16-25 and 27-34.

REJECTION OF CLAIMS UNDER 35 U.S.C. §§ 102 AND/OR 103

Claims 16-25 and 27-34 stand rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over Kladders et al. (U.S. Pat. No. 5,833,088). Applicant respectfully traverses this rejection.

The Examiner alleges that the "reference discloses all of the elements of the claims (note claim 16 for example). Additionally, should Kladders be later deemed to be missing an element or feature that is conventional, the examiner considers that it would have been obvious in view of Kladders to provide the apparatus therein with the missing element or feature for the purpose of improving the performance of the same, or better adapting the apparatus to hold particular content." Applicant respectfully disagrees with the Examiner's characterization that the present disclosure is anticipated by Kladders et al. and/or that Kladders et al., alone or in combination with any of the other references cited, renders Applicant's claimed disclosure obvious.

It is respectfully submitted that Kladders et al. teaches "containers for pharmaceutical solutions which are used in certain inhalers which meter liquids by means of a measuring chamber....Since the liquid to be metered in this case frequently contains highly effective pharmaceutical substances which have to be accurately metered, the range of fluctuations in the dosage administered must be as small as possible; otherwise, the patient will not receive the quantity of active substance prescribed by the doctor. In view of the tiny amount of liquid administered per dose, even relatively small bubbles lead to high percentage deviations in the above-mentioned inhalers." See Kladders et al. at Col. 1, lines 12-23.

Contrary to the Kladders et al. cited reference, Applicant's closure and heat set, wide mouth container combination disclosure is particularly useful for hot-filled and pasteurized products packaged in a heat set polyester container with a wide mouth opening, and for packaging oxygen sensitive foods and beverages where a longer shelf life is desirable. Accordingly, it is respectfully submitted that one of ordinary skill in such

art would not look to the Kladders et al. disclosure for assistance or motivation. As such, Applicant's claimed disclosure provides for a heat set container, that is, a container capable of withstanding fill temperatures greater than 82° C without experiencing unwanted deformation. Additionally, Applicant's claimed disclosure provides for a wide mouth container. Wide mouth containers typically have and require more headspace thus, more oxygen exists to spoil the contents of the container. Wide mouth containers also create more vacuum during hot fill. Applicant's claimed disclosure solves these problems, unlike the Kladders et al. disclosure.

Specifically in this regard, amended independent Claims 16 and 33 recite "[a] closure and heat set, wide mouth container combination". Kladders et al., alone or in combination with any of the other references cited, does not disclose, teach or suggest any structure similar to "[a] closure and heat set, wide mouth container combination" as recited in independent Claims 16 and 33 of Applicant's claimed disclosure. There is no motivation or incentive in Kladders et al., alone or in combination with any of the other references cited, to arrive at Applicant's disclosure as claimed.

Accordingly, for the sake of brevity, it is respectfully submitted that in view of Applicant's arguments stated above, Kladders et al. is an improper primary reference, and Applicant's claims are patentability distinct with respect thereto, as well as no teaching in existence to suggest the combination of the references. Obviousness is not established by combining the teachings of the prior art absent some teaching, suggestion or incentive supporting such combination. Additionally, according to recent U.S. Supreme Court case law, there must be an apparent reason to combine the references. In the Office Action, the Examiner did not present any such reasons why it

would be obvious to combine the references. As a result, Applicant respectfully submits that the Examiner has failed to identify any motivation by one of ordinary skill in the art to combine or modify the art to arrive at the claimed disclosure other than the impermissible use of hindsight.

While it is Applicant's view that the claims as written are not anticipated by and/or obvious in light of the cited art and fully comply with Section 102 and Section 103, in the interest of expediting prosecution and without prejudice to pursuing this and related subject matter in future applications, Applicant has amended independent Claims 16 and 33. Therefore, independent Claims 16 and 33 should be in condition for allowance. Further, because Claims 18-25, 27, 28, 30-32 and 34 depend from Claims 16 and 33, they are at least as limited, are similarly not taught by Kladders et al., alone or in combination with any of the other references cited, and should also be in condition for allowance. In view of the above amendments and these remarks, Applicant respectfully requests the Examiner to reconsider and withdraw the Section 102 and/or Section 103 rejection to Claims 16-25 and 27-34.

CONCLUSION

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. If the

Examiner believes that personal communication will expedite prosecution of this application, he is invited to contact the undersigned at his earliest convenience.

Respectfully submitted,

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